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8 **UNITED STATES BANKRUPTCY COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
10

11 In re

12 HYPERIKON, INC.

13 Debtor
14

Bankruptcy Case No. 21-01776-LT-7/
RS No. JJB-1

**OPPOSITION TO EMERGENCY
MOTION**

15 DECLARATION OF TRUSTEE,
16 LEONARD J. ACKERMAN, IN
17 OPPOSITION TO SREIT 4820
18 INDIANAPOLIS DRIVE, LLC'S
19 EMERGENCY MOTION FOR RELIEF
FROM STAY

20 Date: May 27, 2021

Time: 2:00pm

21 Dept.: 3

Judge: Taylor

22 I, Leonard J. Ackerman, declare:
23

24 1. I am the Chapter 7 Trustee in the above-entitled matter. The following is
25 true of my own personal knowledge, and if called as witness, I could and would
26 testify competently thereto.
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1 2. The bankruptcy petition was filed on April 30, 2021. The initial Section
2 341(a) meeting is scheduled for June 3, 2021. Accordingly, I have not yet had
3 an opportunity to question the Debtor under oath, as to the various aspects of
4 the business.
5

6 3. This is a complex bankruptcy case and the Debtor's schedules, to date,
7 appear to be woefully inaccurate or incomplete in many respects. In the
8 approximately three weeks since the petition was filed, I have discovered all of
9 the following:
10

11 a) On its Summary of Schedules, the Debtor lists assets, consisting entirely of
12 personal property of over **8 million dollars**. I have not yet determined the
13 true value of this property, however, I have determined that the Debtor's
14 activities are far flung, with its major business activity apparently consisting
15 of sales of lighting accessories on Amazon, with goods stored in fulfillment
16 centers, believed to be located throughout the country, some waiting to be
17 delivered, and some stored in facilities controlled by third parties and some,
18 apparently, controlled by Amazon itself.
19
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21 b) One of the warehouses, which apparently housed a large portion of
22 inventory, was located in Indianapolis, with no security system, and the
23 Debtor informed me that the key was located under the stairs. I had to
24 arrange to have an inventory taken in Indiana and have the locks changed. I
25 am also in the process of dealing with a possible theft at that location and
26 dealing with law enforcement in Indiana.
27
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1 c) Additionally, I am informed and believe, based on documents supplied by
2 the Debtor, that the Debtor has done business and owes sales tax in Canada,
3 and has or had a sales office in Tijuana, Mexico. There is also a purported
4 priority Customs Claim, in an amount in excess of \$1,000,000.00
5 apparently held by the Department of Homeland Security, that required
6 attention by myself and my counsel to determine if it was secured. (Doc. 1,
7 p.17).
8

9
10 d) Finally, I learned of another potential asset that was not listed on the
11 schedules, when I was contacted by the United States Attorney's Office
12 Victim-Witness Coordinator for assistance in obtaining a Victim's Impact
13 Statement from the Debtor, for the potential benefit of the bankruptcy
14 estate, via a possible future restitution order. Apparently, the Debtor's
15 former bookkeeper had been indicted for wire fraud, among other things,
16 for allegedly embezzling more than \$175,000 from the Debtor
17

18 e) The Debtor did not turn over a single dime to me on the petition date. I
19 made demands to several banks for the turnover of funds on deposit. On
20 May 12, 2021, almost two weeks after the petition was filed, I received a
21 check for \$80,251.83 from City National Bank. These were the first and
22 only funds I received in connection with this Bankruptcy Case prior to the
23 date Movant filed its emergency motions. After the emergency
24 motions were filed, I did pick up additional checks from my
25 Post Office Box in connection with this matter, including a check for
26
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1 \$471,978.55 from Pacific Mercantile. However, for the reasons noted in the
2 following paragraphs, I am not currently able to spend any of these funds.
3

4 f) As noted above, the Section 341(a) has not yet been held. According to the
5 Debtor's schedules, the Debtor does not have a single secured creditor.

6 (Doc.1. p. 16). The Debtor did list the U.S. Small Business Administration
7 as a general unsecured creditor in the amount of \$451,027.00 with respect
8 to a PPP Loan. (Doc. 1, p. 23).
9

10 g) However, a Uniform Commercial Code Financing Statement Search run by
11 my counsel, on May 21, 2021, turned up a UCC Financing Statement filed
12 by SBA on May 17, 2020. A copy of that Financing Statement is attached
13 hereto as Exhibit 1. Despite repeated email and voice mail requests from my
14 counsel, Debtor's counsel has not provided any information with respect to
15 either this UCC Financing Statement or other financing statements that she
16 located. In fact, it was not until after the emergency motions were filed, that
17 Debtor's counsel responded at all, and indicated that he had no information
18 because he had not heard from his client. Accordingly, I have not been able
19 to determine whether the SBA Financing Statement, (or any of the other
20 financing statements my counsel located), are valid. Nor have I yet been
21 able to trace any of the funds I now have on hand. Unless and until these
22 issues are resolved, none of the funds on hand are available to pay any
23 administrative expense- rent or otherwise- as they might be subject to a
24 security interest.
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1 h) I have NOT received a single rent payment from HomeGoods since the
2 filing of the bankruptcy petition. I am informed and believe that
3 HomeGoods may have transferred the sublease rent that would have been
4 due to the Debtor on May 1, 2021, electronically, early, and prior to the
5 filing of the bankruptcy petition, but have not yet been able to trace any
6 funds.
7

8 i) If it is determined that all or most of the inventory and/or intellectual
9 property is subject to a valid security interest and/or that other hard assets
10 may also be subject to other security interests, then it may be that the only
11 asset of the estate that I may be able to successfully monetize, (unless, of
12 course, there are avoidance claims), may be the HomeGoods sublease,
13 which, as the Movant notes, is sublet at a substantially higher base
14 monthly rental than the main lease.
15

16 j) I am further informed and believe that Home Goods is waiting for
17 direction from the Court with respect to any future rentals and, in the
18 interim, that Counsel for Home Goods has informed my counsel that he
19 instructed his client to reserve any rents due under the sublease beginning
20 with the June 1, 2021 rent. I would be happy to provide information as to
21 that reserve when it becomes available to me. I have not consented to the
22 reserve format or waived any rights in that regard, but am just informing the
23 Court of my understanding of HomeGoods' position.
24

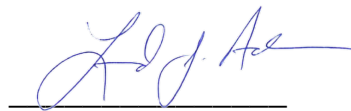
25 4. I need the additional time which may be available under Section
26 365(d)(5), to determine if the rent which apparently had been paid pre-petition
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1 to the Debtor for the sublease is available for my use or subject to a security
2 interest, and to determine if the estate is solvent or may be administratively
3 insolvent. With respect to all future rents, counsel for the subtenant indicates
4 that the June rent, and all further rent would be reserved. The sublease rent is
5 substantially more than the rent owing to Movant under the master lease.
6 Accordingly, no harm whatsoever, will befall the Movant if the time is
7 extended, as permitted by the Bankruptcy Code, to June 29, 2021.
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10 5. To summarize-

- 11 a) I have not received any rents from the subtenant, who apparently paid the
12 sublease rent due May 1, 2021 to the Debtor, pre-petition,
13 b) It is my understanding that the Subtenant intends to reserve the June sublease
14 rent and all future rents, until the issues surrounding the lease dispute are
15 resolved,
16 c) I need the additional time available under section 365(d)(3) through June 29,
17 2021 to determine if any of the funds that I have on hand are subject to a
18 security interest and to determine the veracity of Movant's allegations.
19 d) I am entitled to sanctions against Movant and its counsel for abuse of the
20 emergency motion procedures.
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23 I declare under penalty of perjury under the laws of the United States of
24 America that the foregoing is true and correct. Executed on May 26, 2021 at
25 San Diego, California.
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Leonard J. Ackerman, Trustee

UCC FINANCING STATEMENT**FOLLOW INSTRUCTIONS**

A. NAME & PHONE OF CONTACT AT FILER (optional) Corporation Service Company 800-858-5294
B. E-MAIL CONTACT AT FILER (optional)
C. SEND ACKNOWLEDGMENT TO: (Name and Address) CORPORATION SERVICE COMPANY 801 ADLAI STEVENSON DRIVE Springfield, IL 62703-4261 USA

DOCUMENT NUMBER: 88814170002
FILING NUMBER: 20-7778762076
FILING DATE: 05/17/2020 09:30

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1. DEBTOR'S NAME: Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

OR	1a. ORGANIZATION'S NAME Hyperikon, Inc.			
	1b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
1c. MAILING ADDRESS 707 BROADWAY STE 800		CITY SAN DIEGO	STATE CA	POSTAL CODE 92101
			COUNTRY USA	

2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

OR	2a. ORGANIZATION'S NAME			
	2b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
2c. MAILING ADDRESS		CITY	STATE	POSTAL CODE
				COUNTRY

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

OR	3a. ORGANIZATION'S NAME U.S. Small Business Administration			
	3b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
3c. MAILING ADDRESS 10737 Gateway West, #300		CITY El Paso	STATE TX	POSTAL CODE 79935
				COUNTRY USA

4. COLLATERAL: This financing statement covers the following collateral:

All tangible and intangible personal property, including, but not limited to: (a) inventory, (b) equipment, (c) instruments, including promissory notes (d) chattel paper, including tangible chattel paper and electronic chattel paper, (e) documents, (f) letter of credit rights, (g) accounts, including health-care insurance receivables and credit card receivables, (h) deposit accounts, (i) commercial tort claims, (j) general intangibles, including payment intangibles and software and (k) as-extracted collateral as such terms may from time to time be defined in the Uniform Commercial Code. The security interest Borrower grants includes all accessions, attachments, accessories, parts, supplies and replacements for the Collateral, all products, proceeds and collections thereof and all records and data relating thereto. EXEMPT Per California Government Code Section 6103 PLEASE EXPEDITE 437518 7410

5. Check only if applicable and check only one box: Collateral is ☐ held in a Trust (see UCC1Ad, item 17 and instructions) ☐ being administered by a Decedent's Personal Representative

6a. Check only if applicable and check only one box:

☐ Public-Finance Transaction ☐ Manufactured-Home Transaction ☐ A Debtor is a Transmitting Utility

6b. Check only if applicable and check only one box:

☐ Agricultural Lien ☐ Non-UCC Filing

7. ALTERNATIVE DESIGNATION (if applicable): ☐ Lessee/Lessor ☐ Consignee/Consignor ☐ Seller/Buyer ☐ Bailee/Bailor ☐ Licensee/Licenser

8. OPTIONAL FILER REFERENCE DATA:

[182250012]

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